an application for 271 authority.[71] Strict compliance with each requirement of section 271 is the only sure way that the Commission can ensure that sustainable competition will be realized in a local market.

Bell Atlantic has not yet attained compliance with each item on the competitive checklist, and therefore, the Commission must deny Bell Atlantic's application until such time as each of the criteria are satisfied. Bell Atlantic's Application is deficient in a number of fundamental areas: (1) Bell Atlantic does not provide nondiscriminatory access to all UNEs, including unbundled loops as required by checklist items (ii) and (iv); (2) Bell Atlantic has not demonstrated that it provides non-discriminatory access to unbundled dedicated transport; (3) Bell Atlantic does not provide interconnection that complies with the requirements of section 251, including its duty to provide nondiscriminatory access to collocation and interconnection trunks; (4) it does not appear that Bell Atlantic provides nondiscriminatory access to poles, ducts, conduits and rights of way at just and reasonable rates and in compliance with section 224 of the Act; and (5) Bell Atlantic's imposition of unreasonable and discriminatory termination penalties obviate its compliance with its resale obligations under the Act.

A. Bell Atlantic Does Not Provide Nondiscriminatory Access To Unbundled Local Loops

Section 271(c)(2)(B)(iv) of the Act requires a section 271 applicant to provide, or offer to provide, access to "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services." To satisfy the nondiscrimination requirement under checklist item (iv), a BOC must demonstrate that it

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71 *See, e.g., BellSouth Louisiana II Section 271 Order*, ¶ 50.

can efficiently furnish unbundled loops to competing carriers within a reasonable timeframe, with a minimum level of service disruption, and at the same level of service quality as it provides to its own customers.[72] Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business.

The local loop must be provided on a nondiscriminatory basis pursuant to section 251(c)(3).[73] A BOC seeking to satisfy checklist item (iv) must provide nondiscriminatory access to the various types of unbundled loops identified by the Commission in the *Local Competition First Report and Order*, *e.g.*, 2-wire voice-grade analog loops, 4-wire voice-grade analog loops, and 2-wire and 4-wire loops conditioned to allow the competing carrier to attach requisite equipment to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals.[74]

Furthermore, BOCs must deliver the unbundled loop to the competing carrier within a reasonable timeframe, with a minimum of service disruption, and of the same quality as the loop that the BOC used to provide service to its own customer.[75] A BOC must also provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested.[76] For example, if it is technically feasible to unbundle a loop to allow the CLEC to provide greater bandwidth than that previously provided by the BOC

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72 *BellSouth Louisiana II Section 271 Order*, ¶ 185.

73 *See* 47 U.S.C. § 271(c)(2)(B)(ii) and (iv).

74 *See Local Competition First Report and Order*, ¶ 380.

75 *See* 47 C.F.R. § 51.313(b); 47 C.F.R. § 51.311(b); *Local Competition First Report and Order*, ¶¶ 312-16.

over that loop, the BOC must show that it provides such functionality. Last, a BOC must provide cross-connect facilities, for example, between an unbundled loop and a requesting carrier's collocated equipment.[77] Competing carriers must have nondiscriminatory access to the various functions of the BOC's operations support systems in order to obtain unbundled loops in a timely and efficient manner.

Bell Atlantic states that, through July 1999, it has provided 44,000 unbundled loops on a stand-alone basis, and 152,000 loops as part of platforms.[78] Bell Atlantic further states that it is delivering unbundled loops on time, meeting installation dates for CLEC loops a higher percentage of the time than it does for its own retail orders.[79] With respect to "hot cut" procedures, *i.e.,* disconnecting loops from Bell Atlantic switches and reconnecting them to a CLEC switch, while at the same time updating the database to direct the calls to the CLECs switch, Bell Atlantic states that KPMG found that Bell Atlantic's technicians followed the required hot cut procedures 97 percent of the time.[80] Citing KPMG's report, Bell Atlantic states that any interruptions in service over 5 minutes (the New York Commission's goal) are attributable to CLEC error 68 percent of the time, and to Bell Atlantic only 11 percent of the time.[81]

(...continued)

76 *See Local Competition First Report and Order*, ¶ 382.

77 *See id.* ¶ 386.

78 *See* Application, at 20. Bell Atlantic's Application does not address its ability to provide high capacity loops, dark fiber loops, sub-loop elements, or inside wire pursuant to the Commission's forthcoming *UNE Remand Order. See* "FCC Promotes Local Telecommunications Competition – Adopts Rules on Unbundling of Network Elements," FCC Press Statement, September 15, 1999

79 *See id.*

80 *See id* at 22-23.

81 *See id.* at 24.

1. Bell Atlantic does not follow loop provisioning procedures, and as a result, Bell Atlantic's hot cut performance remains deficient

Based upon the experience of ALTS members, Bell Atlantic, despite performance that seems to be ramping up, still experiences significant difficulties provisioning both new loops and hot cuts. Before the Commission can approve Bell Atlantic's Application, there must exist a solid record of Bell Atlantic's ability to furnish CLECs with unbundled loops at the same level of service quality that its own customers enjoy, within a reasonable time frame, and under circumstances that do not unduly interrupt customer service.

Many of the problems associated with Bell Atlantic's loop provisioning can be traced to Bell Atlantic's failure to consistently adhere to the established procedures for provisioning hot cuts in New York. As Bell Atlantic discussed in its Application, a new set of hot cut procedures were jointly developed by the parties and the New York Commission as a result of problems identified by KPMG in its testing process.[82] Under the New York hot cut procedures, Bell Atlantic is to conduct a series of tasks in preparation for the hot cut to ensure that the telephone subscriber's service is seamlessly transitioned from Bell Atlantic to the CLEC. KPMG, in Exception 54 summarized the hot cut process as follows:

> [T]he RCCC [Regional CLEC Coordination Center] coordinates a series of tasks performed at the Frame Due Time by the BA-NY Recent Change Memory Administration Center (RCMAC), the BA-NY Frame Technician(s), and the CLEC. The RCMAC performs translation updates to a BA-NY switch, which disconnects dial tone to the subscribers loop. The BA-

82 *See* KPMG Exception 54

> NY Frame Technician removes BA-NY's switch cross connections from the subscriber's loop and connects the CLEC's switch cross-connections to the subscriber's loop. The CLEC then provides dial tone to the subscriber's loop. The Hot Cut process should be coordinated to ensure that the transfer of service occurs at the designated FDT and that any service disruption to the subscriber is minimized.[83]

KPMG concluded that Bell Atlantic routinely did not adhere to the established hot cut process, and provisioning and loop provisioning procedures were often not observed.[84] KPMG explained that coordination of the frame due time ("FDT") is necessary to minimize the impact of the hot cut on the end user customer: "The Hot Cut process should be coordinated to ensure that the transfer of service occurs at the designated FDT and that any service disruption to the subscriber is minimized."[85]

Following the identification of hot cut procedure problems by KPMG, Bell Atlantic instituted two separate sets of changes to its methods and procedures for hot cuts, first on March 22, 1999 and again on June 21, 1999. One of the important new hot cut procedures instituted in June was a requirement that Bell Atlantic conduct a check for CLEC dial tone on the CLEC's assigned port before noon two days before the hot cut is to be performed and telephonically notify the RCCC of the results of that dial tone check.

Following implementation of the second set of new procedures in June, KPMG conducted retesting of Bell Atlantic's hot cut coordination process. Specifically, KPMG observed, over a two-week period "61 hot cut orders at BA-NY central offices in New York City, a total of 137 state-wide orders from CLEC sites, and a total of 31 state-wide

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83 *Id.*

84 *See id.*

85 *Id.*

hot cut orders from the RCCC."[86] However, even after the implementation of new procedures and while being observed by KPMG, Bell Atlantic still did not comply with the hot cut procedures. KPMG noted in its Final Report that Bell Atlantic placed only 90% of the phone calls required under the hot cut procedures to ensure seamless hot cuts.[87] Further, "KPMG discovered evidence that BA-NY was not performing dial tone checks of CLEC lines before the required two-day lead time."[88]

At the conclusion of testing, KPMG deemed its Exception regarding Bell Atlantic's hot cut performance "Satisfied with Qualifications, Exception Addressed."[89] KPMG's final word on Bell Atlantic's performance in provisioning unbundled loops was as follows: "BA-NY is not strictly following its timeline for pre-wire and coordinated provisioning activities up to two days before frame due time. KPMG believes that if these timelines are not followed strictly, trouble-shooting efforts can be hindered and potential provisioning problems can result."[90] KPMG noted that Bell Atlantic's failure to synchronize the hot cut process will detrimentally affect customers, stating that when frame technicians fail to perform loop cutover activities in a synchronized fashion, and

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86 *See* KPMG Exception 54 Closure Report (Jul. 28, 1999).

87 *See* KPMG Final Report, P12-3, Table IV-12.6: POP12 at POP12 IV-291

88 *See id.*

89 According the KMPG Final Report, Satisfied With Qualifications, Exception Addressed means that "the evaluation criteria was not initially satisfied, an Exception was raised, BA-NY made changes, and the criterion was subsequently satisfied *with qualifications*." KMPG Final Report, Executive Summary, II-6 (emphasis added).

90 *See* KPMG Final Report, P3-23, Table IV-3.3: POP3 at POP3 IV-56.

"some portion of the cut is performed either late or early," the new CLEC customer can face disruptions in service ranging "from hours to days."[91]

When a new CLEC customer experiences a service outage, it is the CLEC who is blamed for the problem. As a result, the Commission must ensure that Bell Atlantic is capable of performing this basic function reliably and with a high degree of accuracy. A major problem in monitoring Bell Atlantic's performance of hot cuts arises because the New York on-time performance metric for unbundled loops counts early cutovers as "on time," even though premature cuts may result in disruption of service to the customer. The performance metrics in existence in New York at this time do not reflect this fact, and as a result, Bell Atlantic's on time performance numbers look better than they really are. The Commission must ensure that Bell Atlantic is capable of provisioning loops, and that the performance metrics used to analyze loop provisioning present an accurate picture of Bell Atlantic's performance.

2. Bell Atlantic routinely misses Firm Order Commitment dates

In evaluating whether Bell Atlantic's OSS complies with the section 271 competitive checklist, the Commission must examine whether Bell Atlantic provides competitors with nondiscriminatory access to due dates, often referred to as a firm order commitment ("FOC") date, or Bell Atlantic provides a Local Services Confirmation ("LSC"). Under the performance metrics for ordering functions established by the New York Commission, Bell Atlantic is required to provide a FOC within two business days of having received a service order; for CLECs utilizing Bell Atlantic's Web GUI interface or EDI systems to place orders, instead of a FOC, Bell Atlantic provides a

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91 *See* KPMG Final Report, P3-33, Table Iv-3.3: POP3 at POP3 IV-59.

LSC.[92] FOCs and LSCs allow CLECs to monitor the status of their orders and to track their orders for their own, and their customers' records.

As the Commission has recognized, owing to their use as barometers of performance, "FOC and rejection notices play a critical role in a CLEC's ability to keep its customer apprised of installation dates (or changing thereof) and to modify a customer's order prior to installation."[93] Further, the Commission has recognized that the inability to provide CLECs with timely FOCs can be viewed as a significant indication of whether a BOC's OSS is capable of providing competitors with parity of performance.[94]

The New York Commission metric for order confirmation timeliness requires that electronically submitted UNE or resale orders receive a confirmation or rejection notice within two hours of the order's submission, and that 95% of orders must meet the standard.[95] In its Application Bell Atlantic contends that it performs its ordering functions, including provision of FOCs and LSCs, on a timely basis, and contends that its performance for the first seven months of 1999 was better than the New York Commission's established interval.

The assertions in Bell Atlantic's Application belie its performance both in the KPMG test and the performance reflected in its own numbers. As a result, Bell Atlantic's ability to provide CLECs with FOC and LSC information in a manner that

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92 *See* KPMG Final Report, at POP4 IV-70.

93 *See Ameritech Michigan Section 271 Order*, ¶ 186.

94 *See id.*, ¶ 188; *see also BellSouth Louisiana II Section 271 Order* at ¶ 56 ("BellSouth does not offer competing carriers nondiscriminatory access to due dates."); *BellSouth South Carolina Section 271 Order*, ¶¶ 167-169..

95 *See Order Adopting Inter-Carrier Service Quality Guidelines*, Case 97-C-0139 (NY P.S.C. Feb. 16, 1997); *New York State Carrier-to-Carrier Guidelines*
(continued...)

complies with the Act remains unproven. In its Final Report KPMG stated that "Provisioning dates identified within BA-NY order confirmations meet the desired due date requested in KPMG's order 88% of the time."[96] Further, Bell Atlantic's own numbers reflect a similar sub-par performance. According to Bell Atlantic, "In June and July, on a volume-weighted basis, BA-NY's overall on-time performance for confirmations and reject notice for UNE orders was 88%; in August, overall on-time performance was just under 94%,"[97] a performance that, while close to meeting the performance standard in New York, nonetheless, does not. Bell Atlantic, therefore, has not demonstrated that it *is providing* FOCs as required by the Act.

B. Bell Atlantic's Provision of DSL Capable Loops Does Not Comply With the Act

Despite Bell Atlantic's assertion that it now provides loop "conditioning" services for the purpose of upgrading lines to provide DSL service which is tariffed in New York,[98] Bell Atlantic imposes unreasonable restrictions upon competitors' access to DSL capable loops. Several problems exist with respect to Bell Atlantic's ability to provide DSL capable loops, and must be addressed prior to a finding by the Commission that Bell Atlantic is currently providing nondiscriminatory access.

First, Bell Atlantic has not demonstrated that it has the ability to provide DSL capable loops in a nondiscriminatory fashion. One ALTS member reports only 14% of

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(...continued)
Performance Standards and Reports, Bell Atlantic Compliance Filing, Metric OR-1 (Confirmation Timeliness) (Jul. 12, 1999).

96 *See* KPMG Final Report, at POP4 IV-70.

97 *See* Application at App. A, Tab 2, *Joint Declaration of Stuart Miller and Marion Jordan*, ¶ 49.

98 *See id.* at 25.

its loops were delivered on-time in the month of August, and no better in the month of September, despite Bell Atlantic's agreement in the New York Commission's DSL collaborative (described *infra*) to implement processes to improve its performance.[99] Further, as it is presently tariffed,[100] Bell Atlantic's DSL offering is in violation of several provisions of the Act. Specifically, the restrictions proposed by Bell Atlantic upon ADSL and HDSL loops contravene both the Act and the Commission's Rules, by creating artificial technological distinctions among links that illegally limit the offerings of CLECs. Moreover, Bell Atlantic has not demonstrated that the rates it proposes for its DSL offerings comply with the TELRIC pricing standards mandated by the Commission.

1. Bell Atlantic imposes artificial technological restrictions on the availability of DSL capable loops

The Commission has made clear that the Act is technology neutral, and therefore, market forces, rather than regulatory distinctions, should drive the advancement of the nation's communications infrastructure. In the Commission's words: "Congress made clear that the 1996 Act is technologically neutral and is designed to ensure competition in all telecommunications markets."[101] Similarly, the Commission has noted that "[it is] mindful that, in order to promote equity and efficiency, [it] should avoid creating regulatory distinctions based purely on technology."[102] Furthermore, the Commission

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99 *See Comments of Covad Communications, Inc.*

100 *See Bell Atlantic-New York's Joint Affidavit in Support of Proposed Rates for ADSL-Qualified, HDSL-Qualified, and Digital-Designed Links*, Case 98-C-1357 (Sept. 13, 1999) ("*Joint Affidavit in Support of DSL Tariff*").

101 *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking* at ¶ 11 (rel. Mar. 31, 1999) ("*Advanced Telecom Order*").

102 Federal-State Joint Board on Universal Service, *Report to Congress*, CC Docket No. 96-45, ¶ 98 (rel. Apr. 10, 1998).

has recently noted that "[t]he incumbent LECs' obligation to provide requesting carriers with fully-functional conditioned loops extends to loops provisioned through remote concentration devices such as digital loop carriers (DLC)."[103] Moreover, the Commission has stated that in order to demonstrate compliance with its obligation to provide nondiscriminatory access to unbundled loops, the BOC "must provide access to any functionality of the loop requested by the competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested."[104]

Bell Atlantic's New York DSL tariff imposes restrictions upon the provision of ADSL and HDSL links that violate the Act and the Commission's Rules by imposing illegal restrictions upon their availability. Specifically, Bell Atlantic ties the availability of ADSL and HDSL links to Bell Atlantic's limited service offerings by restricting the length of the links available to those of less than 18,000 and 12,000 feet in length, respectively.[105] The only way a CLEC can avoid the artificial technological restrictions imposed by Bell Atlantic is to pay excessive non-recurring charges ("NRCs") for "specially designed" loops referred to by Bell Atlantic as "Digital Designed Links" ("DDLs").[106] However, DDLs must be ordered by any CLEC that desires links that are longer than those available pursuant to Bell Atlantic's restricted tariff offerings. But even the availability of such "custom" links is limited by Bell Atlantic to links of a particular

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103 *Advanced Telecom Order*, ¶ 54.

104 *See BellSouth Louisiana II Section 271 Order*, ¶ 187.

105 *Joint Affidavit in Support of DSL Tariff*, ¶15.

106 For example, for a Two-Wire Digital Designed Metallic Link (18,000-30,000 feet) Bell Atlantic proposes a NRC of $1,466.85 per link for the removal of load coils (up to 21,000 feet). *See* DSL Tariff at 5.5.2.

length. To the extent CLECs require links beyond those offered by Bell Atlantic's DDL Tariff, the CLEC must request additional conditioning through the bona fide request process.[107] The loop categories established by Bell Atlantic would effectively limit CLECs to two lengths of links – modeled after Bell Atlantic's own service applications – regardless of the applications that CLECs may wish to pursue. For example, a CLEC may be willing to accept a digitally conditioned loop that is more than 18,000 if it wishes to deploy a technology other than ADSL or HDSL, or if it plans to offer a lower capacity service over the link. Yet the only provision in the Bell Atlantic tariff that would allow for such an application would force the CLEC to go through the BFR process. Because this process provides no information on the rates that the CLEC would ultimately pay, or the time it would take to complete BFR review and provision the link, this option is really no option at all.

In addition, the Bell Atlantic tariff apparently would deprive CLECs of the ability to obtain a digital link if Bell Atlantic chooses to provision the link over remote concentration devices, such as digital subscriber line access multiplexers ("DSLAMs") and digital loop carriers ("DLCs"). In order to comply with its obligation to provide unbundled loops, Bell Atlantic must clarify that it will unbundle digital loops of any length requested by CLECs, regardless of whether they are provided over remote concentration devices.

The Commission should affirmatively state that Bell Atlantic has a statutory obligation to unbundle loops served by remote concentration devices and reject any Bell Atlantic effort to constrain CLEC access to digital facilities by placing restrictions on the

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[107] *See* DSL Tariff at 5.5.1.1.

availability of ADSL and HDSL loops. The Commission should remind Bell Atlantic that the Act does not countenance artificial technological distinctions of the type that Bell Atlantic has proposed.

2. Bell Atlantic's DSL tariff imposes unsupported and non-TELRIC recurring and non-recurring charges for loop conditioning

In its *Local Competition First Report and Order*, the Commission adopted the TELRIC standard for pricing network elements unbundled pursuant to section 251(c)(3).[108] In so doing, the Commission noted that "the price of a network element should include the forward-looking costs that can be attributed directly to the provision of services using that element."[109] Bell Atlantic has failed to demonstrate that the rates meet the TELRIC standard.

The recurring and non-recurring charges proposed by Bell Atlantic for loop conditioning and qualification fail to demonstrate compliance with TELRIC principles. Bell Atlantic's failure to comply with the Commission's TELRIC standard is well characterized by the recurring charge it proposes for "Mechanized Loop Qualification." Bell Atlantic contends that the proposed "Mechanized Loop Qualification Charge" is designed to recover the costs associated with creating and maintaining" the loop qualification database.[110] In a footnote, Bell Atlantic concedes that rather than complying with TELRIC methodology, the Mechanized Loop Qualification charge is based on "the

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108 *See Local Competition First Report and Order*, ¶ 673.

109 *Id.*

110 *Joint Affidavit in Support of DSL Tariff*, ¶ 60.

estimated, forward-looking costs of the functions involved in Database creation (and maintenance)."[111]

By Bell Atlantic's admission, its proposed non-recurring charges for removal of load coils and bridge taps does not comply with the TELRIC pricing methodology. Bell Atlantic concedes that: "The costs are forward-looking despite the fact that they assume the use of copper feeder cable, in contrast to the DLC-based, fiber-feeder technology the [sic] underlies BA-NY's studies of other types of loops."[112] Therefore, the Commission must require Bell Atlantic to make its DSL tariff offerings compliant with TELRIC principles before concluding that it has met its obligation under this checklist item.

3. Performance metrics for DSL loops are not yet completed

In order for Bell Atlantic to demonstrate that it provides nondiscriminatory access to DSL capable loops, it must demonstrate that it provides them to competitors in the same manner as it provides them to itself. This requires a demonstration that Bell Atlantic meet the same standards of timeliness, reliability in terms of installation and repair, and overall service quality.[113] The only meaningful way for Bell Atlantic to make such a showing would be to submit performance data, such as the time intervals for providing such loops and whether due dates are met.[114] Unfortunately, no such metrics exist. The parties are just now in the midst of negotiating performance metrics for provisioning of DSL loops. At the Second July Technical Conference Judge Stein granted MCI WorldCom's motion to convene a collaborative to negotiate performance

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111 *Joint Affidavit in Support of DSL Tariff,* n.7.

112 *Joint Affidavit in Support of DSL Tariff,* 53.

113 *Ruling Concerning the Status of the Record,* Case 97-C-0271 (Jul. 8, 1997).

114 *See BellSouth Louisiana II Section 271 Order,* ¶ 187.

standards.[115] The collaborative participants first met in August and the collaborative process is on-going. Until such time as the collaborative participants have completed their drafting process, the New York Commission has approved those metrics, and Bell Atlantic has demonstrated a proven track record of compliance with the metrics, Bell Atlantic necessarily will be precluded from demonstrating compliance with its obligation to provide competitors with xDSL loops.

VI. BELL ATLANTIC DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO INTERCONNECTION

Section 251 requires a BOC to allow requesting carriers to link their networks to the BOC's network for the mutual exchange of traffic. To fulfill the nondiscrimination obligation under this checklist item, a BOC must show that it provides interconnection at a level of quality that is indistinguishable from that which the BOC provides itself, a subsidiary, or any other party.

Section 271(c)(2)(B)(i) of the Act requires a section 271 applicant to provide or offer to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." Section 251(c)(2) imposes upon incumbent LECs "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access." Pursuant to section 251(c)(2), interconnection must be: (1) provided at any technically feasible point within the carrier's network; (2) at least equal in quality to that provided by the local exchange carrier to itself or . . . [to] any other party to which the carrier provides interconnection;

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115 *Minutes of Technical Conference*, Case 97-C-0271 (Jul. 29, 1999).

and (3) provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] . . . and section 252.

Section 252(d)(1) of the Act states that "[d]eterminations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of [section 251(c)(2)] . . . (A) shall be (i) based on the cost . . . of providing the interconnection . . . and (ii) nondiscriminatory, and (B) may include a reasonable profit." Competing carriers have the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network.[116]

Technically feasible methods of interconnection include, but are not limited to: physical collocation and virtual collocation at the premises of an incumbent LEC and meet point interconnection arrangements.[117] The incumbent LEC must submit to the state commission detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations.[118] A BOC must have processes and procedures actually in place to ensure that physical and virtual collocation arrangements are available on terms and conditions that are "just, reasonable, and nondiscriminatory" in accordance with section 251(c)(6). In evaluating whether a 271 applicant has complied with it obligations, the Commission examines information such as the length of time required for an applicant to process and implement requests for both physical and virtual collocation.[119] Further, the BOC must provide

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116 *See* (1996) ("*Local Competition First Report and Order,* ¶ 209.

117 *See* 47 C.F.R. § 51.321; *Local Competition First Report and Order,* ¶ 553.

118 *See* 47 C.F.R. § 51.321(f); *Local Competition First Report and Order,* ¶ 602.

119 *See BellSouth South Carolina Section 271 Order,* ¶¶ 200-02.

interconnection that is "equal in quality...and indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate or any other party."[120]

With respect to collocation, Bell Atlantic states that it now provides collocation to competitors at central offices serving 85 percent of Bell Atlantic's access lines in New York.[121] In addition to its claims that it meets "virtually" every deadline for providing collocation with no backlog of collocation requests, Bell Atlantic explains that it now has over 80 employees dedicated only to collocation matters.[122]

A. Bell Atlantic Does Not Provide Nondiscriminatory Access to Unbundled Transport

Transport is an unbundled network element that must be provided on a nondiscriminatory basis pursuant to section 251(c)(3).[123] Transport can either be dedicated to a particular carrier or shared by multiple carriers including the incumbent LEC. The BOC must provide transport to a competing carrier under terms and conditions that are equal to the terms and conditions under which the incumbent LEC provisions such elements to itself.[124]

1. Provision of Dedicated Transport

To comply with the statutory requirement of section 251(c)(3), an incumbent LEC must provide unbundled access to dedicated transmission facilities between LEC central

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120 *Local Competition First Report and Order,* ¶ 224.

121 *See* Application at 16.

122 *See id.* at 18.

123 *See* 47 U.S.C. § 271(c)(2)(B)(ii) and (v).

124 *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 315 (1996) ("*Local Competition First Report and Order*"); *see also* 47 C.F.R. § 51.313(b).

offices or between such offices and those of competing carriers.[125] Additionally, the ILEC must provide all technically feasible transmission capabilities that the competing provider could use to provide telecommunications services[126] and not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnection is technically feasible, or restrict the use of unbundled transport facilities.[127] To the extent technically feasible, the incumbent LEC must provide requesting carriers with access to digital cross-connect system (DCS) functionality in the same manner that incumbent LECs offer such capabilities to IXCs that purchase transport services.[128]

2. Bell Atlantic is experiencing significant problems provisioning dedicated transport

Bell Atlantic contends that it has completed 99 percent of its shared transport orders on time during June, July, and August 1999, and meets competing carrier's orders for dedicated transport faster than it does for itself.[129] Specifically, Bell Atlantic claims to have provided 325 dedicated local transport facilities to competing carriers.[130] Finally, Bell Atlantic claims it is adding new interoffice facilities capable of meeting competing carrier's transport demand on a "massive" scale.[131]

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125 *See Local Competition First Report and Order,* ¶ 440.

126 *See id.*

127 *See id; see also* 47 C.F.R. § 51.309.

128 *See* 47 C.F.R. § 51.319(d)(2)(iv); *Local Competition First Report and Order*, ¶ 444.

129 *See* Application, 27.

130 *See id.*

131 *See id.*

Bell Atlantic's representations of its performance in provisioning dedicated transport to CLECs belies the experiences of ALTS members. As of today, several ALTS members are experiencing significant difficulties in ordering and obtaining unbundled dedicated transport. Specifically, several ALTS members report that Bell Atlantic is woefully late in providing significant numbers of orders for high capacity DS-3 and T1 circuits. One carrier reported a four month delay in the provisioning of one order. The delay experienced by the CLEC ultimately resulted in the CLEC's customer canceling the order. Additional evidence of Bell Atlantic's provisioning problems is found in Bell Atlantic's recently imposed "moratorium" on voice grade, digital data systems, and hi cap services in the State of New York, which apply to any "expedited date due request" and "FOC date improvements." Moreover, Bell Atlantic is not providing the interconnection trunks associated with high capacity dedicated transport, resulting in similar problems for CLECs, as set forth more fully below. Therefore, based on members' recent experiences, it is clear that Bell Atlantic does not comply with its obligation under the Act to provide unbundled dedicated transport.[132]

B. Bell Atlantic Does Not Provide Nondiscriminatory Access to Interconnection Trunks

An incumbent LEC must design its "interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used [for the interoffice trunks] within [its] . . . own network[]."[133] The equal in quality obligation is not limited to service quality perceived

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132 The Application did not address Bell Atlantic's obligation to provide dark fiber transport pursuant to the Commission's forthcoming *UNE Remand Order*.

133 *See* 47 C.F.R. § 51.305(a)(3); *Local Competition First Report and Order*, ¶ 224; *see also Ameritech Michigan Section 271 Order*, . ¶ 255.

by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier.[134] Useful information to determine compliance with this checklist item is the call completion rate for calls originating on the BOC's network that terminate with BOC customers and the completion rate for calls originating on the BOC's network that terminate with competing LECs' customers.[135]

By providing interconnection to a competitor in a manner less efficient than the incumbent LEC provides itself, the incumbent LEC violates the duty to provide "just" and "reasonable" interconnection under section 251(c)(2)(D).[136] An incumbent LEC must accommodate a competitor's request for two-way trunking where technically feasible.[137] Specifically, a BOC must engineer, repair, and maintain its interconnection trunks to the competing carrier in the same manner that the BOC performs these functions on its own interoffice transmission facilities. In order to demonstrate compliance with this checklist item, BOCs should demonstrate establishment of standardized procedures for the ordering and provision of interconnection trunks.

Further, a BOC can demonstrate that it is meeting its statutory obligations with respect to interconnection by submitting performance measurements regarding its provision of interconnection trunks (installation of new trunks and augmentations to existing trunk groups) and collocation arrangements (physical and virtual).

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134 *See* 47 C.F.R. § 51.305(a)(3); *Local Competition First Report and Order*, ¶ 224.

135 *See Ameritech Michigan Section 271 Order*, ¶ 235.

136 *See Local Competition First Report and Order*, ¶ 218.

137 *See* 47 C.F.R. § 51.305(f); *Local Competition First Report and Order*, ¶ 219.

Bell Atlantic claims that, while there have been coordination problems with competing carriers, it has met all of the Act's requirements for interconnection.[138] As proof, Bell Atlantic asserts that it has provided 37 competing carriers with 349,000 interconnection trunks – more than one-third of the total number of trunks that Bell Atlantic has connecting its switches in its entire interoffice network in New York state.[139] Bell Atlantic further claims to have met, during the first seven months of 1999, over 99 percent of the due dates for interconnection trunks.[140] In addition, Bell Atlantic states that competing carriers have a higher percentage of trunks available than are available to Bell Atlantic itself.[141]

Bell Atlantic's Application fails to demonstrate that it is providing competitors with interconnection trunking arrangements that comply with its obligations under section s 271 and 251. In its Pre-Filing Statement, Bell Atlantic committed to provide interconnection trunks that were forecasted within an 18 business day interval, and unforecasted trunks within a 45 day business day interval.[142] Further, Bell Atlantic committed to make available two-way trunking arrangements.[143] Bell Atlantic has not met these standards. Bell Atlantic does not provide CLECs with interconnection trunks on an equivalent basis to trunks it provides itself.[144] Bell Atlantic readily admits that

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138 *See* Application, at 14.

139 *See id.*

140 *See id.* at 15.

141 *See id.*

142 Pre-Filing Statement at 12.

143 *See id.*

144 "Equal in quality" means that the ILEC "provide[s] interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an (continued...)

"there have been difficulties in coordinating [interconnection trunk arrangements] with competing carriers,"[145] however, Bell Atlantic seeks to attribute delays to difficulties in "negotiation" or "coordination" are an attempted obfuscation. Further, the results of the KPMG test highlight additional problems relating to interconnection trunks. The KPMG Final Report found that that there have been discrepancies in confirming due dates associated with Bell Atlantic's fulfillment of CLEC interconnection trunk orders.[146] The experiences of several ALTS members who have experience severe delays in trunk provisioning substantiate the findings of the KPMG Final Report. One carrier was forced to delay by almost a month the turn-up its New York switch due to Bell Atlantic's problems in provisioning trunks. At bottom, Bell Atlantic cannot be said to be in compliance with checklist item one relating to interconnection.

C. Bell Atlantic Has not Demonstrated that it Provides Nondiscriminatory Access To Poles, Ducts, Conduits And Rights Of Way

Section 271(c)(2)(B)(iii) requires a 271 applicant to provide, or offer to provide, "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."[147] The Commission has also interpreted section 251(b)(4) as requiring

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(...continued)
affiliate, or any other party." *See* Application *of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in* Louisiana, CC Docket No. 98-121, FCC 98-271 at note 219 (released on October 13, 1998) ("*Second BellSouth 271 Order*").

145 Application at 14.

146 *See, e.g., KPMG Final Report* at POP5IV-112 ("LSCs in the Functional Evaluation were not consistently accurate and complete. 3.6% of total LSCs were returned incomplete. 79% of these income LSCs were missing [Service Order ID] Due Dates ("SOIDD")).

147 47 U.S.C § 271(c)(2)(B)(iii).

nondiscriminatory access to LEC poles, ducts, conduit and rights-of-way for CLECs in accordance with section 224.[148] In order to fulfill the nondiscrimination obligation under this checklist item, a BOC must show that competing providers can obtain access to its poles, ducts, conduits, and rights-of-way within reasonable time frames and on reasonable terms and conditions, with a minimum of administrative costs, and consistent with fair and efficient practices. Failure by the BOC to provide such access may prevent competing carriers from serving its customers.

If a state has exercised its preemptive authority under section 224(c)(1), a BOC satisfies its duty under the checklist item at section 271(c)(2)(B)(iii) if it complies with the state's, rather than the Commission's, regulations.[149] New York has certified that it regulates pole attachments.[150] However, the 1996 Act extended the Commission's authority to include not just rates, terms and conditions, but also the authority to regulate nondiscriminatory access to poles, ducts, conduits and rights-of-way.[151] Absent state regulation of the terms and conditions necessary to ensure nondiscriminatory access to poles, ducts, conduits and rights-of-way, the Commission has determined that it retains jurisdiction over this matter.[152] As such, review of Bell Atlantic's posture in New York regarding CLEC access to Bell Atlantic-owned or -controlled poles, ducts, conduits and rights-of-way under section 224 remains a necessary component of the 271 analysis.

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148 *See Local Competition First Report and Order*, ¶ 1237.

149 *See Local Competition First Report and Order*, ¶ 1239 (holding that the LEC satisfies its duty under Section 251(b)(4) when it satisfies all certified, preemptory state regulations, if any).

150 *See States That Have Certified That They Regulate Pole Attachments*, DA 92-201, Public Notice (Feb. 21, 1992); *see also* New York Public Service Law § 119-a.

151 *See* 47 U.S.C. § 224(f); *Local Competition First Report and Order*, ¶ 1239

152 *See BellSouth Louisiana II Order*, ¶ 173 n.581.

In determining whether a BOC provides "nondiscriminatory access" in accordance with the requirements of section 224, the Commission considers whether the BOC complies with the regulations established by the Commission in the *Local Competition First Report and Order*, implementing the nondiscriminatory access provisions of section 224(f) for purposes of section 251(b)(4).[153] As a matter of procedure, the reasonableness of particular conditions of access imposed by a utility is determined on a case-specific basis.[154]

The Commission has adopted certain rules of general applicability and guidelines, pursuant to section 224, to facilitate implementation of nondiscriminatory arrangements regarding access to poles, ducts, conduits and rights-of-way. The rules permit the incumbent utility to condition a competitor's access on federal and industry standards for safety and engineering.[155] These rules also address issues pertaining adherence to state and local laws, and to uniform and nondiscriminatory applicability of rates terms and conditions of access.[156] Therefore, the Commission must examine, for example, state and local laws addressing franchise requirements, and reservation of space by Bell Atlantic, qualifications for workers installing lines, procedures for modifying facilities, and procedures for denying requests for access.[157] Because the checklist item in section 271 expressly cross-references section 224, the Commission must now consider whether the

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153 *See Local Competition First Report and Order,* ¶¶ 1119-1240.

154 *See id.* ¶ 1143.

155 *See id.* ¶¶ 1151-52.

156 *See id.* ¶¶ 1153-58.

157 *See id.* ¶¶ 1159, 1164, 1165-70, 1182, 1209, 1211, 1224.

BOC has complied with these rules and guidelines set forth in the Commission's own *Local Competition Order*.

Bell Atlantic states that as of July 1999, it has provided 818,000 pole attachments and 3.9 million feet of conduit to 24 competing carriers and 139 cable companies in New York.[158] Further, Bell Atlantic asserts that it provides such access on a timely basis, either providing its own spare capacity or constructing space more quickly than Bell Atlantic does for itself. Finally, Bell Atlantic states that it has increased its construction staff and is now able to perform 180,000 pole attachments a year.[159]

Despite its claims, the Bell Atlantic Application does not show adequate proof that it provides and will provide nondiscriminatory access to in-building conduits and rights-of-way controlled by it. Thus, Bell Atlantic has not satisfied the Act's checklist requirement. As ALTS has indicated in previous Commission proceedings,[160] facilities-based CLECs are not yet receiving reasonable access to transmission pathways necessary to reach all consumers of local exchange service. Conduit facilities and rights-of-way controlled by Bell Atlantic, particularly those facilities that can provide a competitor with access to a large number of potential customers such as conduit and rights of way within a multiple tenant environment[161] ("MTE"), become "key terrain" in the battle for local

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158 *See Application,* at 33-34.

159 *See id.* at 35.

160 *See, e.g., Comments of the Association for Local Telecommunications Services*, WT Docket No. 99-217, CC Docket 96-98 (filed Aug. 27, 1999).

161 The Commission is currently examining a number of issues regarding the accessibility of CLECs to rooftops and other rights-of-way on and within office buildings, apartment buildings and other multiple tenant environments that are under the ownership or control of utilities and/or building owners. *See In re Promotion of Competitive Networks in Local Telecommunications Markets*,
(continued...)

customers. Historically, the monopoly status of local exchange carriers has allowed them to dominate this consumer access. CLECs do not possess this historical advantage, nor can they duplicate the facilities necessary to gain access to these customers. It is essential that CLECs be given nondiscriminatory access to this key terrain owned or controlled by Bell Atlantic and it is incumbent upon Bell Atlantic to make this showing in its Application,[162] However, Bell Atlantic has failed to do this, and, in fact, has indicated its belief in the Competitive Networks proceeding that section 224 does not require it to do so.[163]

D. Bell Atlantic's Collocation Tariffs Violate Key Provisions of the Commission's *Collocation Order*

Section 251(a) requires all telecommunications carriers, including BOCs, to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. In addition, Section 251(c)(6) requires ILECs to provide nondiscriminatory access for physical interconnection or access to unbundled network elements. In recognition of the fact that ILEC imposed restrictions on collocation were hamstringing the ability of competitors to deploy new advanced telecommunications services, on March 31, 1999, the Commission adopted a landmark order requiring the implementation of new national collocation rules designed "to stimulate investment and deployment of advanced services" by "strengthening collocation requirements, thereby reducing costs and delays associated with competitors collocating in an incumbent LEC's

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(...continued)
Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 99-217 (rel. July 7, 1999) ("*Building Access NPRM*").

162 *See* 47 U.S.C. § 271(d)(3)(C); *see also supra* Section II.A.

central office."[164] Although in more than eight months have passed since the Commission adopted its ground breaking order, most BOCs still have not complied with the Commission's *Collocation Order*. Bell Atlantic's New York collocation tariff[165] is no exception. Bell Atlantic's Tariff contains a number of provisions that violate the Commission's national collocation rules. Set forth below, ALTS provides a detailed analysis of the violations in Bell Atlantic's Tariff. ALTS submits that the Commission may not grant Bell Atlantic's Application until the deficiencies detailed below have been remedied by appropriate Tariff amendments. For each violation of the Commission's Rules, ALTS has identified the offending section of Bell Atlantic's Tariff and set forth the manner in which it violates the Commission's *Collocation Order*. While this list is not meant to be exhaustive, by these examples, ALTS hopes to demonstrate to the Commission the highlights of Bell Atlantic's noncompliance. The Commission should require Bell Atlantic to correct these and any other shortcomings regarding adherence to the Commission's collocation rules.

1. Bell Atlantic Imposes Unnecessary Provisioning Delays Upon CLECs

Tariff Sections 5.1.2.(A), 5.6.1(C), 5.6.2(D)(1), 5.6.3(B)(3), 5.8.1(B) and 5.8.4(A) require, for physical collocation arrangements, that a CLEC first sign a confidentiality

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(...continued)

163 See Reply Comments of Bell Atlantic in WT Docket No. 99-217 (filed Sept. 27, 1999) at 2.

164 *See Collocation Order*, ¶¶ 7, 18.

165 *See* Application, App. H, New York Tel. Co. P.S.C. No. 914, Network Interconnection Services Regulations, Rates and Charges Applying to the Provision of Network Interconnection Services to Certified Local Exchange Carriers Within the Operating Territory of the New York Telephone Co. ("914 Tariff" or "Tariff").

agreement before Bell Atlantic will make available a Site Survey/Report indicating the available collocation space, modifications and measures to make new space available in a central office. Notably, Tariff Section 5.2.2(E) does not similarly require a confidentiality agreement for reports rendered to the CLEC by Bell Atlantic in the course of a virtual collocation request. Confidentiality agreements are not addressed under the Commission's Rules and the information set forth in the report, as required by the Commission's Rules, is not of the type that should be protected. Section 51.231(h) of the Commission's Rules requires that this report be provided to the requesting CLEC within 10 days of the collocation request and makes no mention of conditions that may be imposed by the ILEC. While this requirement may seem, on its face, to be a reasonable one, execution of a confidentiality agreement that is acceptable to both Bell Atlantic and the CLEC may unnecessarily lengthen both the period in which the report is delivered and the installation interval between the collocation request and delivery of collocation space. The potential for this unnecessary procedural device to serve as a barrier to timely collocation is unacceptable and should either be clarified or eliminated.

Tariff Section 5.1.2(D) sets out three options for Bell Atlantic when responding to a request for physical collocation: within 8 business days of receipt of the collocation request Bell Atlantic will: (1) reply that space is available and proceed with the arrangement; (2) reply that space is not available and act in accordance with Tariff Section 5.1.5(D) (discussed below); or (3) reply that space is not "readily" available and take 20 additional business days to respond in accordance with options (1) or (2), preceding.

Option 2 is incomplete and the follow-up regarding space exhaustion is not in accordance with the Commission's Rules. Tariff Section 5.1.5(D)(1) states that if sufficient space is not available to accommodate a physical collocation request, Bell Atlantic will, within 10 business days of denying the collocation request, permit the CLEC to tour the central office. This tariff provision meets the requirements of section 51.321(f) of the Commission's Rules, however, neither this tariff provision, nor any section in Tariff 914, states that when physical collocation cannot be provided due to space exhaustion, Bell Atlantic is duty-bound by section 51.321(e) of the Commission's Rules to provide virtual collocation except at points where Bell Atlantic proves to the state commission that virtual collocation is not technically feasible.[166] Failure to mention this requirement in the physical collocation section, as well as the virtual collocation section of the tariff is evidence that the spirit, if not the letter, of the Commission's Rules is not being followed. Additionally, Tariff Section 5.1.5(D)(2) states that a central office deemed by the New York Commission to have no space available for physical collocation may not be toured by any CLECs. This prohibition on tours violates section 51.321(f) of the Commission's Rules which states no exception or condition for the requirement that the ILEC give tours to all CLECs denied collocation based on space exhaustion. In the *Collocation Order*, the Commission clearly stated that "in addition to providing the state commission with detailed floor plans," it must allow CLECs that have been "denied collocation due to space constraints to tour the entire premises in question"

166 *See* 47 C.F.R. § 51.321(e).

and that such tours would "enable those providers to identify space that they believe could be used for physical collocation."[167]

Option 3 of Tariff Section 5.1.2(D), wherein Bell Atlantic provides itself with an additional 20 business days to make a determination on whether space is available, is an unacceptable delay in the application process. While the Commission did not rule on a specific provisioning interval, it did view 10 days as a reasonable time period within which to inform a new entrant of whether its collocation application is accepted or denied.[168] GTE and Ameritech have both claimed that they respond to space requests within 10 days.[169] In reality, the eight business days that Bell Atlantic gives itself, actually become 10-12 calendar days depending on the day used to start the count. Twenty business days becomes 26-28 calendar days. As such, in Option 3, Bell Atlantic may take as long as 40 days—almost 6 weeks—before it first informs a CLEC whether it has space available for collocation in a central office. While the Commission did not conclude upon a specific interval, as noted above, 40 days is a far cry from what it believed to be reasonable.

Further, in a number of instances, Bell Atlantic uses business days (Monday-Friday only) when counting time periods in which it has responsibilities for actions in the collocation arrangement process.[170] However, when the CLEC is responsible for like actions, the time window is measured in calendar days, giving the CLEC roughly 25%

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167 *Collocation Order*, ¶ 57.

168 *See id.* ¶ 55.

169 *See id.* It is important to note that in the *Collocation Order*, the Commission refers to calendar days, not business days.

170 *See, e.g.,* Tariff Sections 5.1.2(A), 5.1.2(D), 5.1.4(A).

less time to do like work.[171] This point regarding business versus calendar days may seem minor, but it is indicative of a certain level of discrimination held in Bell Atlantic's tariffed collocation procedures.[172]

2. Bell Atlantic Imposes Upon CLECs Unnecessary Implementation Delays

Tariff Section 5.1.4(C) states that the physical collocation arrangement implementation interval is 76 business days for all standard arrangements that were properly forecasted six months prior to the application date, subject to certain space limitations, forecasting requirements and capacity conditions. This tariff provision poses a number of impermissible obstacles to CLECs needing physical collocation to compete in the New York local exchange market.

As an initial matter, 76 business days equates to roughly 106 calendar days, or three and a half months. This is a long period for a best-case timeframe for getting from the initial collocation request to the effective, physical collocation of equipment. Second, this best-case scenario does not factor any site conditioning. Tariff Section 5.1.5(B)(1) states that "raw space conversion timeframes fall outside normal intervals" and must be negotiated on a case-by-case basis. Thus, the actual best-case interval could be considerably longer than three and a half months. Third, Bell Atlantic imposes forecasting requirements under Tariff Section 5.5.1(B)(3) which serve as penalties to new entrants. Under this tariff section, the interval start date, which is supposed to be the date on which Bell Atlantic received the CLEC's collocation request, will be delayed up to three months depending on when the CLEC submitted a forecast for the space. For

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171 *See* Tariff Section 5.1.4(B).

example, a new entrant that has not yet supplied Bell Atlantic with a space demand forecast will have an almost seven-month installation interval, at best.[173] Fourth, Tariff Section 5.5.2 places limitations on the ability of CLECs to collocate equipment in New York central offices based on Bell Atlantic and vendor capacity: no more than 20 per month; no more than 8 in a geographical area; and no more than 3 in one day. The limits are ambiguous because the numbers are not tied to any particular item or event. Further, Bell Atlantic does not base these limits on any expressed factual foundation, nor does it define a "geographical area." As such, the limits are unsupported and potentially arbitrary.

A similar problem exists with regard to Tariff Section 5.5.2(D), which sets the implementation interval for virtual collocation at 105 business days (which is approximately 145 calendar days or almost five months) for all standard arrangement requests which were forecasted in accordance Tariff Section 5.5.1, noted above. The best-case scenario for a new entrant that has not forecasted its space requirements to Bell Atlantic in advance of its collocation request is an implementation interval of in eight months.[174]

Tariff Section 5.1.6(M) requires a CLEC that intends to deploy facilities or transmission equipment for microwave interconnection to obtain all necessary

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(...continued)

172 *See, e.g.*, Tariff Section 5.4.2(B)(11).

173 Seventy-six business days which equates to three and a half months (5.1.4(C)), plus a three-month forecast penalty (5.5.1(B)(3)), equals a seven and a half-month waiting period for physical collocation.

174 One hundred and five business days, which equates to five months (5.5.2(D)), plus a three-month forecast penalty (5.5.1(B)(3)), equals an eight-month waiting period for virtual collocation.

governmental approvals for installation *and* operation prior to installation of such facilities or equipment on the premises of Bell Atlantic. In its *Collocation Order* and subsequent rules, the Commission did not address the issue of prerequisite microwave licensing specifically. However, the Commission did conclude that ILECs may not impose unreasonable restrictions such as refusing to consider applications for collocation space until a CLEC becomes state-certified or until interconnection agreements have been executed.[175] Similarly, precluding installation of microwave facilities after the issuance of the construction permit, but before final licensing, is unreasonable and creates an unnecessary delay in the implementation interval. Additionally, this tariff provision potentially imposes a restriction upon the deployment of a wireless radio service that neither Bell Atlantic nor the New York Commission has the authority to effect.

3. Bell Atlantic Imposes Restrictions on Methods of Interconnection and Access

Tariff Section 5.1.7(B) sets out three options for termination of CLEC facilities at the CLEC multiplexing node: (1) Bell Atlantic will provide the point of termination bay in a common area at or near the multiplexing node; (2) the CLEC will provide the point of termination bay and associated terminations in a common area at or near the multiplexing node; or (3) the CLEC will provide the point of termination bay inside the multiplexing bay. By this Tariff Section, Bell Atlantic also limits the CLEC to the selection of only one of these methods per multiplexing node. This restriction violates sections 51.321(a), 51.321(c) and 51.321(d) of the Commission's Rules. Section 51.321(a) of the Commission's Rules requires that an ILEC shall provide a CLEC any

175 *See Collocation Order*, ¶ 53.

technically feasible method of interconnection or access to UNEs upon request. Section 51.321(c) of the Commission's Rules creates a presumption regarding previously implemented interconnection methods, stating that previously successful methods of obtaining interconnection or access to UNEs constitute substantial evidence that such method is technically feasible and such methods are deemed presumptively technically feasible if ever deployed by the ILEC. Section 51.321(d) of the Commission's Rules states that denial of any method requires a showing to the state commission that the method is not technically feasible. As each option presented is expressly offered by Bell Atlantic, we assume that all options are technically feasible. As such, unless Bell Atlantic makes an affirmative demonstration to the New York Commission to the contrary, there is no basis for Bell Atlantic's Tariff to include a section which limits the CLEC termination options at its multiplexing nodes.

4. Bell Atlantic Imposes Unreasonable Restrictions on Deployable Equipment

Tariff Section 5.1.6(I) requires that all CLEC equipment to be installed in, or on the exterior of, any central office must either: (1) be on Bell Atlantic's list of compliant products; or (2) be demonstrated as compliant with Bell Atlantic's inspection requirements (Tariff Section 5.1.15) and certain technical specifications (Tariff Section 5.3.6). Similarly, Tariff Sections 5.1.16 and 5.2.6 impose compliance requirements regarding additional technical specifications that must be met by CLEC equipment.

Section 51.323(b) of the Commission's Rules requires an ILEC to permit the collocation of "any type of equipment used or useful for interconnection or access to unbundled network elements," and that when the ILEC objects to a piece of proposed

CLEC equipment, that the ILEC bear the burden of proof to show that such equipment will not actually be used by the CLEC for interconnection or access to UNEs. The Commission's Rules require that proof be provided before the ILEC may refuse the CLEC's equipment.[176] Further, the Commission's Rules further provide that an ILEC cannot hold the equipment to higher safety or engineering standards than its own, nor object to deployment on grounds that such equipment does not meet Bellcore Network Equipment and Building Specifications ("NEBS"). Deployment rejections based on safety issues must be provided to the CLEC in writing within five business days, along with a list of ILEC equipment on the central office premises that meets or exceeds the safety criteria at issue.[177]

Unless the safety or engineering standards referenced in these Tariff sections are adhered to by Bell Atlantic in the deployment of its own equipment, such conditions on equipment are contrary to the guidance issued by the Commission's Rules. If these are the standards to which Bell Atlantic holds itself, then this should be made clear in the tariff. It should also be made clear that it is Bell Atlantic's responsibility to prove that a proposed piece of CLEC equipment does not comply with the necessary standards, rather than allowing the inference that CLEC equipment must either be on the Bell Atlantic list or that the CLEC must prove to Bell Atlantic that the equipment meets all engineering and safety standards. As the rule states, the burden is on Bell Atlantic when denying the deployability of CLEC equipment.

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176 *See Collocation Order*, ¶ 28.

177 *See* 47 C.F.R. § 51.323(b).

Tariff Section 5.1.16(C) permits CLECs to install equipment that has been deployed by Bell Atlantic on its network for five years or more with a proven safety record. However, Bell Atlantic's Tariff does not fully implement the Commission's Rules, which go further and provided that CLECs may deploy "*any* type of equipment used or useful for interconnection or access to unbundled network elements."[178] As noted above, section 51.323(b) of the Commission's Rules also requires that when Bell Atlantic objects to the collocation of a piece of CLEC equipment proposed for collocation, Bell Atlantic bears the burden of proof to show that such equipment will not actually be used by the CLEC for interconnection or access to UNEs, or that it does not comply with a safety or engineering standard that Bell Atlantic itself meets. Such proof must be shown before Bell Atlantic may refuse the CLEC's equipment.[179] The inference that equipment not deployed by Bell Atlantic or its network for five years or more is misleading and should be clarified by Bell Atlantic.

5. Bell Atlantic Imposes Illegal Escort Requirements Upon CLECs

Tariff Sections 5.1.6(F), 5.1.9(A), 5.1.9(H), 5.3.5(A), 5.6.1(A)(3), 5.6.2(I)(1), 5.6.3(B)(3),and 5.8.1(B) require that a Bell Atlantic representative escort CLEC employees when they are present on Bell Atlantic premises to install, inspect, operate, maintain or otherwise attend to the CLEC's collocated equipment. This is an undeniable violation of the Section 51.323(i) of the Commission's Rules, which provide that an ILEC must grant a CLEC access to its collocated equipment "24 hours a day, seven days

178 *Id.* (emphasis added).

179 *See Collocation Order*, ¶ 28.

a week, without requiring either a security escort of any kind or delaying a competitor's entry" into the ILEC premises.[180] The Commission specifically concluded in the *Collocation Order* that the costs and burdens of escorts are unnecessary and ILEC networks receive adequate protection by the employment of alternative measures such as badges, security cameras and other monitoring systems.[181]

Moreover, the Commission was correct in noting the high and unnecessary cost of providing an escort. In its Tariff, Bell Atlantic set the rate for providing escorts for employees, contractors and other agents of CLECs at $60.36 per hour, per escort, payable in quarter-hour increments.[182] If Bell Atlantic must provide an escort at a time other than during regular work hours, the minimum charge is four hours or $241.44. Not only is this charge unnecessary and excessive, it directly in contravention of the Commission's Rules.

6. Bell Atlantic Imposes Unreasonable Restrictions on CLEC Access To and Use Of Space

Tariff Section 5.1.6(K) requires that a CLEC submit a request and then gain written consent from Bell Atlantic prior to modifying, moving, replacing or adding to equipment or facilities that require the use of the freight elevator, loading dock, staging area or requires some other special consideration. Similarly, Tariff Section 5.1.10(B) requires written approval from Bell Atlantic prior to a CLEC's use of a staging area or other building facility for any delivery, installation, replacement or removal of equipment or facilities located within the CLEC's multiplexing node. At first blush, these seem like

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180 47 C.F.R. § 51.323(i).

181 *See Collocation Order*, ¶¶ 48-49.

reasonable requests, however, such requirements can easily be abused to create impediments to CLEC operations within Bell Atlantic's facilities. Prior to the *Collocation Order*, security measures posed the same kind of threat to CLEC operations—hampering normal working operations under the guise of protecting ILEC property. Recognizing that discriminatory security requirements usually result in increased costs without the concomitant benefits in protection, the Commission promulgated section 51.323(i) of its Rules, which requires an ILEC to provide CLECs with unlimited access to its collocated equipment, but permits the ILEC to employ nondiscriminatory security measures—forbidding discriminatory ones.[183]

While the Tariff is not clear, it is appears that the request and written consent requirements of Tariff Sections 5.1.6(K) and 5.1.10(B) are meant to control use of critical traffic areas. As it is restricted by the Commission's Rules from imposing discriminatory security measures, Bell Atlantic should not be permitted to employ discriminatory measures regarding the use and operation of critical facility areas. CLECs are not opposed to reasonable control so long as the same methods of control are imposed on Bell Atlantic or its employees and authorized contractors for the internal operations of Bell Atlantic.

Tariff Section 5.1.9(I) restricts CLEC access to its collocation space during the "commencement, middle and end" of the facility construction period. If additional access is requested by the CLEC during the construction period, Bell Atlantic requires that the CLEC have an escort and be subject to escort charges. As written, this Tariff section

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(...continued)
[182] *See, e.g.*, Tariff Section 10.5.1(C).

appears to grant CLECs three "free" site visits by a CLEC to its facilities during the construction phase. However, if CLEC equipment is located on site during this construction, this Tariff section, or any other type of access restriction, is in direct violation of section 51.323(i) of the Commission's Rules, which require that an ILEC grant a CLEC access to its collocated equipment "24 hours a day, seven days a week." There is no exception carved out for construction phases or any other period. To the extent a CLEC's equipment resides in the Bell Atlantic provided collocation area at any time, the CLEC owner must be permitted access to it.

Tariff Section 5.1.15(B) permits Bell Atlantic to inspect the CLEC's facilities and equipment up to twelve times per year. Such inspections are designed to address CLEC compliance with OSHA and Bell Atlantic regulations regarding fire, safety, health and environmental safeguards. ALTS submits that while these are reasonable concerns, such inspections must be conducted on a nondiscriminatory basis, with Bell Atlantic's equipment subject to inspections of the same frequency, vigor and under the same conditions, as similar inspections of CLEC equipment. As written, the nondiscriminatory application of this Tariff requirement is not assured. The Commission should require Bell Atlantic to revise its tariff to clarify that such inspections will be conducted in a nondiscriminatory manner.

7. Bell Atlantic Must Clarify its Tariff With Respect to Allocation of Collocation Costs Incurred by CLECs

Tariff Sections 5.1.17, 5.2.10, 5.3.7, 5.4.1, 5.4.2(C), 5.6.1(G), 5.6.2(L), 5.6.3(B)(3)(G), 5.6.4(C) and 5.8.8 set forth requirements for certain nonrecurring fees

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(...continued)
[183] *See Collocation Order*, ¶ 47.

and charges (including application, engineering, implementation, and equipment charges) and certain monthly fees and charges (including site preparation, property and equipment charges) that Bell Atlantic seeks to impose upon collocating CLECs. Rates for these fees and charges are listed in Tariff Section 10. None of the above-referenced Tariff sections, and in fact, no provision of the Tariff, addresses the proration of costs among all CLECs that will benefit from the facility or property improvement. Rather, the charges for collocation site preparation imposed by Bell Atlantic seem, under the existing terms of its Tariff, to apply fully to the first CLEC seeking collocation. As such, these Tariff provisions violate both the Commission's order and an order of the New York Commission..

In the *Collocation Order*, the Commission concluded that ILECs must allocate "space preparation, security measures, and other collocation charges" on a prorated basis so that the first collocating CLEC in a particular premise will not be held responsible for the full cost of permanent collocation preparations.[184] In order to effect this proration, the Commission requires ILECs to develop a system of partitioning costs by comparing "the amount of conditioned space actually occupied by the new entrant with the overall space conditioning expenses."[185] While not promulgated into regulation, the Commission held that cost partitioning and the above-noted partitioning methodology would serve as minimum standards that state commissions would have the ability to augment, consistent with the Communications Act.[186] Bell Atlantic has failed to indicate that it is partitioning

184 *Id.*, ¶ 51.

185 *Id.*

186 *See id.*

the collocation charges imposed on CLECs. As such, Bell Atlantic appears to impose site preparation and other related charges in a manner that violates the rules prescribed by the Commission in the *Collocation Order*.

VII. BELL ATLANTIC HAS NOT DEMONSTRATED COMPLIANCE WITH ITS RESALE OBLIGATIONS

Section 271(c)(2)(B)(xiv) of the Act requires a section 271 applicant to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 252(d)(3) sets forth the basis for determining "wholesale rates" as the "retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." This checklist item essentially requires the BOC to offer to telecommunications carriers at wholesale rates all of the retail telecommunications services it provides to subscribers that are not telecommunications carriers. The BOC is required to make its telecommunications services available for resale without unreasonable or discriminatory conditions or limitations.

Bell Atlantic states that it makes available for resale at wholesale rates all of the telecommunications services it offers at retail to subscribers that are not telecommunications carriers.[187] Specifically, through July 1999, Bell Atlantic states that

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[187] *See* Application, at 44.